

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
AMARILLO DIVISION**

**JOWELL C. BULLARD, NORRIS RAY §  
TOLLERSON, JR., RANDY STOKES, JR., §  
DONNA DAVIS, ROBERT F. DEXTER, JR., §  
JOSHUA R. LUSTER, SCOTT RUSK, §  
JEFFORY E. POOL, TYE A. WARD, JAMES §  
DAVID SMITH, MICHAEL A. KING, §  
DOMINGO MARQUEZ, STEPHEN A. §  
WILSON, H. WAYNE BLACK, CHARLES §  
DOUGLAS WALKER, GARY D. PHENIX §  
SCOTT BEECHER HERRING, PAM J. HITT, §  
SAMUEL RAY GIBSON, EUFEMIO JOE §  
RUBALCABA, CHRISTOPHER L. §  
SCHWARZ, STACY L. GRANT, HERBERT §  
CHARLES CARR, CHRIS JENKINS, TODD §  
FINLEY, KEVIN WAYNE OSBORNE, M.L. §  
WITHERSPOON, ALVIN VIRGIL NEWTON, §  
RODERICK J. UPTON, and KEVIN §  
LANKFORD, §**

**Plaintiffs,**

**v.**

**BABCOCK & WILCOX TECHNICAL §  
SERVICES PANTEX, L.L.C., §**

**Defendant. §**

**CIVIL ACTION NO. 2-07CV-049-J**

**AGREED MOTION FOR AMENDED JUDGMENT**

COME NOW Plaintiffs and Babcock & Wilcox Technical Services Pantex, L.L.C. (“Defendant”) (collectively, the “Parties”) by and through their counsel of record, and file this Agreed Motion for Amended Judgment (the “Parties’ Agreed Motion”) and would show the Court as follows:

1. The Parties tried this case to the Court from August 12, 2008, to August 20, 2008. On June 17, 2009, the Court issued its MEMORANDUM OPINION AND ORDER and FINDINGS OF FACT AND CONCLUSIONS OF LAW.

2. Consistent with that opinion, the Court entered Judgment on August 24, 2009 (the “Judgment”). Among other holdings in the Judgment, the Court held that Defendant willfully misclassified the job positions of Desk Lieutenant, Administrative Lieutenant, Curriculum Developer, and Fire Lieutenant as exempt from the overtime provisions of the Fair Labor Standards Act (“FLSA”). The Court therefore applied a three-year statute of limitations to FLSA claims of Plaintiffs who held those positions during the relevant time period.

3. Defendant appealed to the Fifth Circuit solely on the issue of willfulness. On May 4, 2011, the Fifth Circuit vacated the Court’s finding of willful violations and remanded the case to this Court for further proceedings consistent with the Fifth Circuit’s ruling (the “Fifth Circuit Opinion”).

4. In support of the Parties’ Agreed Motion, the Parties now agree that, in light of the Fifth Circuit Opinion: (1) there is no evidence in the record to support a finding that the job positions of Desk Lieutenant, Administrative Lieutenant, Curriculum Developer, and Fire Lieutenant were willfully misclassified as exempt from the overtime provisions of the FLSA, (2) there is no evidence in the record to support a finding that Defendant committed any “willful” FLSA misclassifications or otherwise willfully violated the FLSA, and (3) Plaintiffs’ claims for damages should therefore be limited by a two-year statute of limitations.

5. Because of the Parties’ agreement as to the facts stated in Paragraph 4 above, the Parties believe that moving forward with remand proceedings would not promote judicial

economy or efficiency and would constitute a waste of the time and resources for the Parties and the Court.

6. Accordingly, Plaintiffs and Defendant have filed the Parties' Agreed Motion and shall submit an Agreed Amended Judgment that disposes of all controversies pending between the Parties in this case, CIVIL ACTION NO. 2-07CV-049-J. Therefore, no remand proceedings or any other proceedings shall be necessary and this case shall be fully and finally resolved.

7. The Parties' Agreed Motion and the Agreed Amended Judgment are not made for any improper purpose, but rather, for the mutual benefit of the Parties and for the purpose of promoting judicial economy and efficiency.

8. The Parties' Agreed Motion has been electronically filed and signed with the consent of counsel for all parties pursuant to Northern District of Texas Local Rule 11.1.

WHEREFORE, the Parties respectfully request that the Court grant the Parties' Agreed Motion and sign and enter the Agreed Amended Judgment.

Respectfully submitted,

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